UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/70/Add.4
14 June 1993

ENGLISH
Original: SPANISH

HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Third periodic reports of States parties due in 1991

Addendum

COSTA RICA*/

[24 November 1992]

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*/ For the initial report submitted by the Government of Costa Rica, see document CCPR/C/1/Add.46; for its consideration by the Committee, see summary records CCPR/C/SR.235, SR.236 and SR.240 and Official Records of the General Assembly, Thirty-fifth session, Supplement No. 40 (A/35/40), paras. 334-369. For the second periodic report submitted by the Government of Costa Rica, see document CCPR/C/37/Add.10; for its consideration by the Committee, see summary records CCPR/C/SR.958-960 and Official Records of the General Assembly, Forty-fifth session, Supplement No. 40 (A/45/40), paras. 282-320.

GE.93-16944(EXT)

1. Following the consideration by the Human Rights Committee, on 22 and 23 March 1990 at United Nations Headquarters in New York, of the report submitted by Costa Rica, we consider it important to refer to certain questions addressed to our representatives by the Experts and on which further clarification is necessary.

2. General Office for the Protection of Human Rights. Act No. 7142 of 8 March 1990 on the Promotion of Social Equality for Women is the legal instrument which established the General Office for the Protection of Human Rights under the Ministry of Justice and Pardons.

3. Its basic function is to protect the human rights of the inhabitants of the territory of Costa Rica and, in particular, to protect the rights of women, children and consumers.

4. Within the framework of these protection functions, the Office takes action whenever the rights of the governed are threatened, obstructed or violated. It prevents abuses through actions it initiates with and recommendations it makes to the competent public bodies. It intervenes or intercedes with the authorities in order to defend the rights of the governed. It recommends penalties to be imposed on officials who commit serious violations of the rights of the governed. It recommends amendment of legislation for the purpose of more effectively defending the rights of the governed and improving the public service concerned. It promotes and disseminates knowledge of the rights of the governed in the area concerned. It receives complaints and investigates them, on its own initiative or upon request, and transmits them to the authorities concerned. In general, it takes all action within its power to avoid violations of the rights of the governed and ensures that those rights have full effect. It also encourages continuing study of factors giving rise to inequality of women and of the preventive measures that are called for.

5. It is clear, therefore, that the General Office for the Protection of Human Rights constitutes the culmination of the efforts made to institute control of the State machinery and of its functioning, by protecting the enjoyment and exercise of the fundamental rights of the governed.

6. Earlier developments which are seen as leading to the establishment of the General Office for the Protection of Human Rights were the setting up of the Office for the Protection of Human Rights and Consumers' Rights (Act No. 6815 of 27 September 1982, articles 3 and 7), the Office for the Protection of Human Rights in the Prison System and the Office for the Protection of the Rights of Users of the National Registry Office (Executive Decree No. 16491-J of 21 August 1985), the Office for the Protection of Children (Executive Decree No. 17733-J of 9 September 1987) and the Office for the Protection of Women (Executive Decree No. 19157-J of 1 September 1989).

7. Act No. 7142 then provided, in its article 22, that the Protection Offices functioning within the Ministry of Justice and Pardons, as well as the Offices for the Protection of the Consumer and of Human Rights, were to form part of the General Office for the Protection of Human Rights, their organizational structure being modified so as to create an organic whole. Article 26 of this Act established the internal organization and provided that the other

functions of the General Office for the Protection of Human Rights were to be defined by means of regulations.

8. On 12 December 1990 the President of the Republic and the Ministry of Justice and Pardons signed the Regulations governing the General Office for the Protection of Human Rights (Title II of Act No. 7142 of 8 March 1990, on Promotion of the Social Equality of Women), which also provided that the General Office would comprise the following specialized offices:

(a) Office for the Protection of Human Rights;

(b) Office for the Protection of Women;

(c) Office for the Protection of Children;

(d) Office for the Protection of Consumers and Users;

(e) Office for the Protection of Users of the National Registry Office;

(f) Office for the Protection of Male and Female Detainees of the Prison System.

9. An Assembly of Protectors was also established with the function of coordinating and assisting each of the Protection Offices in taking decisions on matters of major importance which, in the opinion of the General Office for the Protection of Human Rights had to be the subject of deliberation. The Directors of the various Offices may attend and participate in the deliberations of the Assembly, but without the right to vote.

10. It is pointed out that the General Office for the Protection of Human Rights has the general function of ensuring the protection of the human rights of the inhabitants of the territory of Costa Rica and, particularly, the rights of the governed, of women, of children, of consumers, of detainees in the prison system and of users of the National Registry Office.

11. The action taken by the General Office for the Protection of Human Rights has proved highly effective. In many cases it is sufficient to submit a complaint to one of the specialized offices for the matter to be resolved without the necessity of initiating proceedings. The moral authority of the Office is sufficient to ensure that any citizen who feels that his rights have been violated may obtain protection of them within the framework of Costa Rican law. The Office is becoming a monitor of the proper functioning of the Government machinery, ensuring that it conducts itself in accordance with the law. This obviously strengthens the rule of law in Colombia.

12. With the establishment of the General Office for the Protection of Human Rights an organ has been developed that has discernment and functions, in a

manner reflecting the position of the State with regard to civil responsibility for the protection of human rights.

13. Office for the Protection of Human Rights. This Office deals, by definition, with a variety of different subjects which may be classified as follows:

(a) The elderly;

(b) The indigenous population;

(c) The environment;

(d) Casework.

14. The elderly. The Office for the Protection of Human Rights investigates all complaints submitted to it concerning violation of the human rights of the elderly. Its activities consist mainly of receipt and investigation of complaints, and visits to the homes of the elderly, day centres, etc., for the purpose of recording evidence.

15. One part of the activities of this Office consists in the holding of meetings, both within and outside the Office, with State officials or managers of homes for the elderly, for the purpose of coordinating joint action.

16. At a more general level, early in May this Office submitted to the Legislative Assembly a bill entitled "Act for the Protection of the Elderly".

17. About once every fortnight officials of this Office participate in programmes broadcast by the stations "Radio Nacional" and "Radio América Latina" in order to promote the human rights of the elderly.

18. The indigenous population. The Office serves to coordinate action in favour of this population group. The primary activity is one of encouragement. Work is carried out with various organizations such as the Inter-American Institute for Human Rights, the Costa Rican Commission for Human Rights, "El Productor", the Nogbegue Association, and the Sejekto Association, and with a number of indigenous leaders.

19. The two indigenous associations have set up jointly with the Inter-American Institute for Human Rights a legal affairs committee of which the Office is a member. This committee provides legal advice to the indigenous peoples and is currently engaged in the submission to the Legislative Assembly of a bill providing for a replacement to the Costa Rican Institute for Indigenous Affairs and a proposal for modification of the Indigenous Peoples Act. The committee meets as frequently as once a week.

20. The environment. Work in this area has only just commenced but it will have a major impact. A limited study has been made of the legislation governing the land and sea areas of Costa Rica and another study has been made of the Registry of Mines in order to identify all the sites where ore is being extracted from river beds. A study has also been made of the legislation governing this type of ore extraction. Visits have been made to various extraction sites throughout Costa Rica and documentation has been prepared concerning them.

21. The Office is to draw up, together with the Centre for Environmental Studies, an inter-agency plan for obtaining financing and personnel for this project, the basic aim of which is the conclusion of a cooperation agreement with this research centre and the Legislative Assembly.

22. It has not been possible to draw up a specific timetable for this work, which is undertaken as other activities permit.

23. For each of these two areas of work, work for the elderly and work for the indigenous groups, an advisory board has been established. Special meetings of these boards are held when necessary.

24. With regard to the Office's activities in favour of the elderly, an agreement has been reached with the Bar Council under which certain members of the legal profession may act for elderly persons in certain legal matters which, because of their nature, cannot be dealt with by the Office itself. This is a useful possibility which must be availed of. The support of various groups must also be obtained with a view to securing approval of the draft legislation on protection of the elderly.

25. The radio programmes are important because they serve to promote the rights of the elderly that are protected by the Office.

26. The work in favour of the indigenous population is very important at this time when these people must be given support.

27. The environment is a vital area of concern where efforts must be strengthened and a cooperation agreement must be concluded with the Centre for Environmental Studies.

28. With regard to the fourth area of activities (casework), the General Office is currently dealing with a number of very important matters.

29. Some 50 cases of various kinds are currently being handled. These are mainly concerned with the elderly and abuses of authority.

30. The Office for the Protection of Human Rights also participates in the work of the National Commission on AIDS, as well as in training projects in the field of human rights and police operations that are being carried out in the Ministry of Public Security.

31. As already indicated, the Office has begun work in the environmental field and has drawn up a programme of action whose general aim is to have the Office play a role in defending the right to a sound environment and protection of natural resources, a fundamental right that helps to improve the quality of human life.

32. Specific objectives.

(a) To draw up a work programme that will enable the Office to commence work in this field and will define its role;

(b) To establish the necessary contacts in order to secure the support needed for the execution of sound work with trained personnel;

(c) To study, as a first step, the problems connected with the extraction of raw materials from State-owned water courses and the contamination caused by wastes;

(d) To study the results achieved and the impact of these activities;

(e) To study the legislation and the role of the public administration in order to identify any deficiencies in its handling of problems;

(f) To arrange the bibliographical, statistical and technological support needed for these studies;

(g) To make specific technical, legal and administrative recommendations for dealing with the situation;

(h) To develop a strategy for communicating findings to the authorities concerned, in order to provide guidance to the administration in its work;

(i) To follow-up the recommendations and the strategy developed;

(j) To evaluate the results of the programme.

33. (1) Justification. Costa Rica's environmental problems have a number of different aspects which include the issues of bio-diversity and quality of human life. The degradation of our forests, the risk of extinction of certain species of fauna, the contamination of rivers, the problem of wastes, the deterioration of the environment and other harmful developments are examples which show the magnitude of the problems confronting the country.

34. The factors causing this pressure on natural resources and the environment are also of many different kinds. They include inadequately planned urban development (owing to the absence of effective land use planning), massive

degradation of forest land which is part of the nation's heritage and wealth, industrial processes that contaminate with gases and wastes which are affecting the air and rivers, the use of large-scale farming methods that pay little heed to the need to make use of the land according to its real capacity (e.g. the expansion of banana and coffee plantations), uncontrolled hunting of game, the lack of planned collection and treatment of waste products, mining activity which is poisoning rivers, etc.

35. The philosophy revealed by the dark picture thus painted is linked with a short-term approach to the use of available resources. This approach leads to an unwise attitude towards the environment and nature and is harmful to man in the short, medium and long terms.

36. This situation has given rise to the policy of sustained development. This new concept of the use of natural resources seeks to reconcile the economic and social interests that aim to make the highest short-term profit with the interests of protection, maintenance and re-utilization of nature. What is known as sustained or sustainable development is therefore the system of development that seeks to satisfy the needs of the present generations without compromising the ability of future generations to successfully satisfy their needs.

37. For humankind this philosophy must be given priority, involving as it does a balancing of economic and social needs with the interest of rational conservation and management of natural resources and the environment and achieving an equilibrium that can serve only to improve the quality of life.

38. (2) Action by the State. In the last 30 years the State has become aware of the need for action to deal with the complex phenomena that affect our living conditions.

39. It has therefore sought to create protected areas of various kinds, to restrict hunting activities and to encourage reforestation projects, and has also made efforts in other fields.

40. The action taken by the State has nevertheless proved quite insufficient owing to a number of factors that are preventing practical and effective action. These include a shortage of human and material resources, unsuitable and inadequate legislation, excessive bureaucracy in an area where wasted time cannot be permitted, frequent duplication between agencies and departments and the absence of a natural resources strategy effectively applied by the political and other bodies. The result of this is that the State confines itself to the expression of praiseworthy intentions.

41. It is consequently necessary to help in guiding the State's actions in order to make use of the genuine potential that can and must be developed if these problems are to be dealt with more effectively.

42. (3) Role of the Office for the Protection of Human Rights. The participation of the Office for the Protection of Human Rights in this work is an imperative obligation. Under the classification of human rights outlined

above, the environment and natural resources form the subject of a third generation of rights. They have been called the Rights of Solidarity.

43. The basic proclamation of these rights took place at the United Nations Conference on the Human Environment, held in Stockholm in June 1972, and at the recent United Nations Conference on Environment and Development, held in Rio de Janeiro in June of this year.

44. These conferences succeeded in giving formal expression to the fundamental human right to enjoy an appropriate quality of life while respecting natural resources and the ecosystem, with all that this means for present and future generations on earth. They also imposed on humankind an obligation towards its natural environment, in the sense that it must preserve all the available resources and manage them rationally.

45. The Office for the Protection of Human Rights constitutes an important means of dealing with this ethical obligation. However, the subject being so complex and presenting problems that exceed the Office's real possibilities of solution, it has been necessary to establish priorities in those areas to which we believe insufficient attention has been paid, in order to proceed with the task which has just barely begun.

46. In this connection, the deterioration of ecosystems caused by the extraction of materials from State-owned river beds and the urgent need to find a solution to the contamination that is being caused by wastes are two important problems that will serve as a starting point for the execution of specific tasks.

47. The Office for the Protection of Human Rights therefore plans to start work in these areas, the first step being to establish contact with public and private agencies and individuals interested in providing the necessary support for effective execution of the programme, in accordance with the methods decided upon. A specialised Advisory Board for work in this field may also be set up.

48. (4) Methodology. In order to organize the work so as to achieve optimum results, the programme of action has been divided into two stages: (a) Diagnosis and (b) Recommendations.

49. In the first stage a preliminary analysis of the problem must be made and an investigation carried out of the scope and effects of the particular activity considered. For this study it will be necessary to make use of bibliographical, statistical and technological support and to examine the relevant legislation and the role of the State and the local authorities. This diagnosis will provide a general picture of the situation, in the terms defined, and will reveal any deficiencies in the various sectors.

50. In the second stage it will be necessary to develop one or more technological, legal and administrative proposals for more effective joint action to remedy the deficiencies discovered through the diagnosis. Finally, it is hoped to develop a strategy for submission of the proposals to the competent authorities, so that they may be implemented effectively, as the

culmination of a process beginning with investigation of the actual situation in the chosen sectors.

51. Office for the Protection of Detainees in the Prison System. The idea of humanizing the prisons has gained widespread acceptance and in August 1984, at the First Congress for Evaluation of the Prison System, the Ministry of Justice approved the establishment of this Office, with competence to carry out its functions in all establishments of the Prison System.

52. Thus, for the first time, a body was created with the power of ensuring respect for fundamental rights, through supervision activities and the promotion of rights in the Prison System.

53. The Office has been assigned the following functions:

(a) To take action in the event of threats to or obstruction or violation of the rights of prisoners;

(b) To prevent abuses through actions it takes and recommendations it makes to the competent public authorities;

(c) To play the role of mediator in order to persuade the authorities not to engage in acts that violate or may infringe fundamental rights;

(d) To recommend such punishment as may be justified for officials who commit serious violations of the rights of the governed;

(e) To recommend modification of procedures, regulations and laws in order to ensure more effective defence of the above-mentioned rights and improvement of the functioning of the Prison System.

(f) To take all action within its power to avoid violations of these rights and ensure their full implementation.

54. The Office for the Protection of Human Rights acts on its own initiative or upon application by the party concerned and, for the purpose of its investigations and actions may call for documents or information from public offices. It enjoys independence in technical matters and is administratively responsible to the Office of the Minister.

55. Attention is drawn to the fact that the functions and powers described above are now fully effective.

56. The achievements of the Office for the Protection of Human Rights are already quite considerable. They include the following:

(a) A considerable decrease in cases of abuse of authority to the prejudice of prisoners;

(b) Provision of advice to prisoners concerning procedures, as well as information concerning laws and regulations affecting them;

(c) Investigation and settlement of prisoners' disputes;

(d) Effective mediation in cases of mutiny and other prisoner demands;

(e) Enabling prisoners to exercise their right to vote;

(f) Special assistance to foreign prisoners;

(g) Coordination with the judicial and migration authorities;

(h) Promotion of regulations and decrees protecting the fundamental rights of prisoners (Regulations concerning the Prisoners Aid Fund, Custody of Valuables and the Organization of Prisoners);

(i) Promotion and drafting of legal instruments designed to solve or provide a response to specific problems of prisoners (Convention on the Transfer of Prisoners).

57. Method of work of the Office. The Office for the Protection of Human Rights has two principle areas of activity which are described below.

58. (a) Supervision: This area of the Office's work consists in dealing with the complaints of prisoners and other persons concerning abuses committed by the Prison System authorities or concerning non-observance of the rules and legislation that protect the rights of prisoners (non-application of privileges, arbitrary transfers, failure to recognize progress made, etc.). This activity is known as casework. It almost always involves investigation and procedural work which takes up a great deal of the Office's time.

59. (b) Promotion and training: The work in this area relates to the need to promote the realization of fundamental rights within prisons and in admission units.

60. This work involves activities with the prisoners themselves and with technical, administrative and security personnel.

61. Less work than is needed has so far been done in this area because such casework takes up a great deal of the Office's time and efforts.

62. The promotion and training work must be based on information obtained through the casework and it is therefore necessary to ensure the essential link between the two.

63. The following are some of the promotion and training activities in the area of human rights in the Prison System that have been initiated or are continuing.

64. Dissemination of the laws and regulations governing stays in prison and provision of information concerning the rights and obligations of prisoners; production of information material; classes for prisoners on the procedure for applying for privileges and improved conditions; training of security personnel in dealing with extreme situations and other problems with prisoners and development of awareness of prisoners' conditions; training of technical personnel in the area of their duties towards prisoners; training of administrative personnel; training in and development of methods of organization of prisoners; training in self-management and investigation of possible solutions to prisoners' problems (health, education and work activities).

65. The Office's activities in the area of promotion and training are carried out on the basis of general, structural needs identified on the basis of experience gained in casework and on the studies carried out and recommendations made by the Office and other organs of the Ministry.

66. It is hoped that, in the medium term, the Office may obtain the necessary technical and administrative personnel to enable it to decentralize its work. For this it will need to have representatives in all penal establishments throughout the country.

67. The Office for the Protection of Prisoners began to function in November 1990 in the Buen Pastor prison.

68. The Office for the Protection of Prisoners has sought to make personnel contacts with female prisoners with the aim of studying more closely the problems of women deprived of their freedom. This has made possible the protection of human rights in one prison, as well as instruction of women prisoners in the duty they owe to themselves and to the community.

69. Efforts have also been made to inform and develop awareness among prison officials through talks and on-the-job training, for male and female security personnel in particular, on such subjects as human rights, the minimum rules for the treatment of prisoners and procedures to be followed in carrying out searches, in handling violence, in making reports, etc.

70. Complaints are received by the Office orally or in writing, while in some cases the Office takes action on its own initiative. Confidentiality is maintained in the investigation of complaints, so that due process is observed and all relevant information is recorded.

71. The Office for the Protection of Prisoners participates actively and directly in the planning and execution of institutional policies, with the aim of ensuring that human rights are taken into account in decision making.

72. Important achievements of this Office include the following:

(a) The use of maximum security only in very serious cases where no other type of accommodation is available in the prison.

(b) A strengthening of the organization of prisoners in a democratic fashion that permits communication between the different parts of the institution and protection of the rights of those concerned.

(c) Continuing coordination with the various technical work teams and the prison management.

73. Office for the Protection of Consumers. The legal basis for the Office for the Protection of Consumers is a law, Act No. 7142 of 8 March 1990 to Promote the Social Equality of Women. This was the Act which established the General Office for the Protection of Human Rights, of which the Office for the Protection of Consumers forms a part.

74. Executive Decree No. 20325-J of 12 December 1990 establishing regulations for the General Office for the Protection of Human Rights laid down and reaffirmed other important principles, such as the authority of the General Office to express independent views, the internal organization, the procedures to be followed and the definition of the specific competences of the various sub-Offices, including the powers of the Office for the Protection of Consumers.

75. Purposes and scope of the Office for the Protection of Consumers. The Office for the Protection of Consumers, as an integral part of the General Office for the Protection of Human Rights, has to serve as an organ to safeguard the human rights of the inhabitants of Costa Rica, specifically in their capacity as consumers and users of public services.

76. For the fulfilment of these purposes, the legislation has given the Office for the Protection of Consumers various functions and powers that are briefly described below.

77. (a) The Office for the Protection of Consumers has access to the various organs of the State for the purpose of transmitting the requests, complaints and demands of consumers and users of public services. It can act on its own initiative or at the request of any party concerned, may carry out investigations, may request reports from public bodies and may carry out inspections. This power of representing consumers and users has enabled the Office to set itself up as an organ for mediation or for exerting pressure on public and private bodies. To carry out this work the Office has a Protection and Legal Affairs Unit which dealt, in the first half of 1992, with 448 requests and investigations.

78. (b) The Office's ability to make recommendations to various authorities, to suggest measures to be taken by them and to investigate any actions or omissions threatening the interests of consumers or users enables it to perform the function of protecting consumers' rights at the preventive level.

79. (c) The legislation also gives the Office the task of advising consumers and users on ways of exercising their rights under the law. The Office has been performing this function through the free advice it has provided. Nevertheless, a work plan has been drawn up for the dissemination of information concerning the rights of consumers and for encouraging the organization of community groups to protect the interests of their members as consumers. This plan is now being carried out through a pilot project in two Costa Rican communities.

80. (d) One of the Office's functions is "to promote amendment of the relevant legislation" with the aim of ensuring the realization of consumers' rights. The Office is only beginning to perform this function, which involves the arduous task of compiling and studying the legislation in this field and its implementation. Within the framework of this activity, the Office for the Protection of Consumers is participating in the preparation of a bill, currently before the Social Affairs Commission of the Legislative Assembly, on the Public Services Regulatory Authority.

81. Office for the Protection of Women

Juridical Basis: The chapter on Individual and Social Guarantees in the Constitution. Civil and political rights; international treaties and conventions signed and ratified by Costa Rica which deal with human rights. Primarily the "Convention on the Elimination of All Forms of Discrimination Against Women"; laws and decrees such as the Ministry of Justice Organization Act; the Promotion of the Social Equality of Women Act; the (proposed) General Office for the Protection of Human Rights Act; the general and special codes and laws of the Republic.

82. Purposes:

(a) To ensure that the State promotes and guarantees equality of rights between men and women in the political, economic, social and cultural fields.

(b) To verify that the powers and agencies of the State do not allow women to suffer any form of discrimination on grounds of sex and that they enjoy the same rights as do men, regardless of their civil, economic, social, cultural or political status. This is in line with the provisions of the "Convention on the Elimination of All Forms of Discrimination Against Women".

(c) To ensure that the State encourages the establishment and execution of service programmes designed to facilitate the full and unconditional participation of women in the fields referred to in the Promotion of Social Equality of Women Act.

83. Scope and activities of the Office. The Office for the Protection of Women has not yet been able to achieve a great deal, since it lacks a budget and its staff consists only of a director and a legal adviser. Its work has been limited to the following:

(a) A training course for professionals in various fields on the subject of protection of women.

(b) Submission of the following projects: An Overall Plan: Women, Rights and Discrimination; Continuous Training; Women and Development; the Battered Women Hostel Project.

(c) The Forum entitled: "Sexual Harassment and its Impact on the Social Development of Women (Costa Rican Lawyers Association), 13 August 1992.

(d) Lecture to Costa Rican public and private authorities on the protection of women's rights.

(e) Support in cases of general interest submitted by women to the Constitutional Tribunal.

(f) Participation in forums, discussions, panels, etc., dealing with matters of interest to women in general.

(g) Coordination of action with non-governmental organizations to implement programmes affecting women in general and in particular.

(h) To serve as headquarters for the organization of groups to defend women's rights.

84. Casework: up to April 1992 an average of 12 cases (telephone calls and personal interviews) had been dealt with daily. Forty per cent of these cases were complaints of attacks of all kinds (physical, moral, psychological, sexual) against Costa Rican women. These complaints were made by close relatives (spouse, companion, parents or children) and by neighbours and others. The second type of case (8 per cent) involved complaints about legal procedures for recovering maintenance. There were also complaints of sexual harassment by supervisors, teachers, work and study colleagues, neighbours and others, harassing women and preventing their professional and social development.

86. Office for the Protection of Children in Costa Rica: Costa Rica has 3,063,608 inhabitants of whom 42.48 per cent are under the age of 18 years. These are children pursuant to article 37 of the Civil Code of Costa Rica and article 1 of the Convention on the Rights of the Child.

87. Under article 17 of our Penal Code, children under the age of 17 years in Costa Rica may not be held guilty of criminal offences. Where their acts have harmful consequences for third parties an obligation arises for the parents or

those responsible for the minor to pay civil compensation or damages, as article 130 of the Family Code imposes a duty of vigilance and care, in addition to the duties of education and moderate correction. Harmful acts by children under the age of 17 years that may correspond to offences under Costa Rican criminal law are punishable under the Protection of Minors Legislation. The latter establishes various measures of correction ranging from parental warning to the placing of the minor in a special guidance centre. This is in line with the general principles that define the minor as a person to be educated and not punished and that he is a subject and not an object of the law.

88. All the legal bases and machinery underlying action in favour of children in Costa Rica are based on article 51 of the Constitution, which imposes on the State the obligation to give special protection to children, among other more vulnerable persons.

89. Article 55 of the Constitution provides for the establishment of an independent institution having responsibility for giving effect to the presence of the State in special measures for the protection of children and, for this purpose, provides for the setting up of the National Children's Association (Patronato Nacional de la Infancia). Furthermore, article 78 of the Constitution provides that general basic education is compulsory and that both it and pre-school education and other instruction shall be free and paid for by the State.

90. In Costa Rica 24.4 per cent of the national budget goes to the execution of educational programmes and the State bears a substantial part of the cost of higher education. There are four public universities, financed mainly by the State, and considerable help is given to private educational establishments through exemption from taxation and other arrangements.

91. Costa Rica has dispensed with an army since 1948 and the education of children is based on civics and patriotic values.

92. Origin of the Office for the Protection of Children: although three entities - the family, society and the State - play a large role in providing special protection for children (their powers and duties include the exercise of vigilance and care and the provision of education, as well as moderate correction), the duties of those responsible are quite often not entirely fulfilled. We must therefore conclude that where there is non-fulfilment of these duties the responsible parties must be within the three entities referred to above.

93. Failure in carrying out duties towards children necessarily implies the commission of violations of the rights of the child as set forth in the Constitution and the ordinary law of Costa Rica and, now, in the Convention on the Rights of the Child.

94. For this reason, on 9 September 1987, "Childrens Day", the State of Costa Rica took action in favour of children living in the country by establishing the Office for the Protection of Children, whose legal basis is Executive Decree No. 17733-J. Later, in March 1990, this Office was given a firmer juridical basis by the promulgation of Act No. 7142.

95. Character of the Office for the Protection of Children. This Office was not set up in order to replace any other public body or agency. The role assigned to it by the law is to monitor and protect the rights of children and to see that those rights are not merely grammatical expressions of ideals or desirable aims, but that the adult world's response to children is consistent with the rights the latter enjoy.

96. Costa Rica's Office for the Protection of Children thus constitutes an intermediary between the Government and the governed to which the child or his legal representative may have recourse in order to make known, following a consultation, a request or a complaint, situations which are prejudicing the realization of the child's subjective interests. The Office also furnishes guidance to public and private bodies in the area of protection of the rights of children.

97. Forms of access to the Office for the Protection of Children. The Office was established in view of the importance of the protective function that must be performed by the relevant agencies and authorities, whose methods and systems of care are often overly bureaucratic. The Office has therefore been set up as an active and unbureaucratic body to which the minor or his representative can have ready access. A telephone call is sufficient to set the powers of the Office in motion. Those concerned for children may also contact the Office in person or in writing. Furthermore, the Office can act either of its own initiative or on the request of a party concerned.

98. Hierarchic position of the Office. The Office for the Protection of Children is a component part of the General Office for the Protection of Human Rights, which includes other Offices such as the Office for the Protection of Women, etc. The General Office for the Protection of Human Rights is responsible to the Ministry of Justice and Pardons but is empowered under its statute to express its views independently.

The Office is composed of a "Protector", whose is directly responsible to the Ministry of Justice, a staff of advisers and administrative support staff. The budget of the Office forms part of that of the Ministry of Justice and Pardons.

99. Functions of the Office for the Protection of Children. As indicated previously, the powers or competence of the Office are basically to protect the rights of minors under the age of 18 years. In pursuing this objective, the Office carries out various activities under different programmes:

100. (a) Consultations, Requests and Complaints Programme. Under this Programme the Office helps children either directly or through their representative, carrying out consultations on situations involving childrens' rights, in order to identify those responsible for the child's upbringing, education and care and the obligations imposed on them by law. It provides information concerning the legal and administrative methods at its disposal for asserting the rights of children and it intercedes with public and private bodies in order to ensure that cases are considered.

101. When requests are made to the Office, the communication is acknowledged and the matter is studied. In some cases a preliminary investigation is first carried out and for this the Office has access to administrative records of the childrens' courts. In the exercise of his powers, the Counsel, an official of the Office for the Protection of Children, also has access to other judicial records. Where appropriate, the Office calls on the public authority which is not fulfilling its obligations to apply the law that is designed to assist the child concerned.

102. In serious cases the Office has the power to request that the authority superior to the one at fault first investigate the allegations and then take disciplinary measures against the official responsible. The aim is to make public officials aware of the fact that minors are genuinely subjects of the law even though the law does not hold them responsible for their actions, and to see that they are given care and protection. Failure to fulfil this obligation may give rise to measures that will not be welcomed by the official responsible. Basically, however, as mentioned earlier, the aim is to bring officials to realise that the rights of the child are of equal status to the rights of adults or even take precedence over them.

103. The Office may, in lodging complaints, act either on its own initiative or at the request of a party concerned, if it learns of cases of offenses against minors. It may submit the complaint to the Office of the Government Procurator, the accusatory organ of the State, in order that the necessary investigation may be ordered and legal proceedings instituted in accordance with the law.

104. Regulations have been issued under which public officials, in the exercise of their functions, must lend assistance to the Office at the latter's request. Their refusal or failure to do so constitutes serious dereliction of duty calling for punishment by the competent body. This matter is dealt with in article 28 of the Regulations concerning the General Office for the Protection of Human Rights, as well as in article 81 of the Labour Code which, in paragraph (1), authorizes employers to dismiss without incurring employers' liability any official who commits any grave dereliction of duties.

105. This Programme has meant that minors have permanently available to them a remedy, essentially vis à vis the public administration, whenever the latter by action or omission violates the rights of the child. It also enables the Office to inform and instruct those responsible for the upbringing of children regarding the obligations imposed upon them by the law when they assume this responsibility and also regarding the imperative need to comply with these provisions, since the law, in its spirit, does not simply impose an obligation of compliance, but rather provides a means of ensuring that the subjective needs of minors may be met, these needs being quantitatively greater than those of others, because minors are going through phases of life which will determine their future personality as adults.

106. (b) Training, Promotion and Information Programme Concerning the Rights of the Child. This is a Programme that is being carried out with the participation of the community and in which an important role is being played by minors, their parents or those responsible for their upbringing, educators, the administrative police and other public and private bodies involved in caring for children.

107. In addition to inter-agency coordination, the following methods are employed: meetings, workshops, seminars, round-tables, press and radio, educational wall-charts, posters, pamphlets, etc.

108. Special emphasis has been placed on knowledge of the rights of the child, essentially for children themselves, but also for their parents, educators and those responsible for the security of the population, namely the administrative police, since these are the people most directly connected with the law's provisions but are often insufficiently aware of them. This situation gives rise to a number of situations of conflict that can be overcome if those concerned are aware both of their powers and of their duties, and also if minors are aware of their rights and their obligations.

109. Under this programme considerable number of educators and directors and supervisors of educational establishments have received instruction in the rights of the child and suitable methods of child upbringing. Through a multiplier effect, this has increased the number of teachers with training in these matters.

110. Training has also been given to a considerable number of officials of the Administrative Police at intermediate and higher levels and these have undertaken to pass on the knowledge they have gained to their subordinates.

111. The community itself has begun to become aware of situations within it that are prejudicial to the rights of the child and it has become involved in efforts to find appropriate solutions through use of community resources.

112. For the purpose of finding solutions, Committees for Protection of the Rights of the Child have been set up in a number of communities. They are composed of persons of different economic classes, intellectuals and officials of the various public bodies having offices in the communities.

113. The Office aims through this Programme, which includes clearly preventive measures, to reduce the incidence of acts of aggression against minors, to strengthen the family unit and to ensure effective and efficient performance of their duties by public servants responsible for seeing to the care of minors. This is admittedly a difficult task since it involves ending a number of practices, customs and habits that have been passed on from generation to generation without any analysis of their content or of the harm they may cause to the development of children. The results of the efforts being made will seem rather limited in the short-term, but it is hoped that in the medium term present and future adults will have more appropriate answers to give to children.

114. (c) Programme to Review and Modernize National Laws Concerning the Rights of Minors. The provisions of the law constitute an instrument for obtaining satisfaction of social needs, but human practices and customs change and social needs and requirements therefore also change. This makes necessary a continuous review of the legal framework that regulates social activity.

115. In order to maintain a legal framework for the rights of minors that meets the needs of the children of today and those of the future, the Office for Protection of the Rights of Children has set up machinery for study of the current legal framework in this area, which includes a database that will contain all Costa Rica's legislation concerning the rights of the child. It will thus be able to examine this legislation in the light of the present social situation and recommend to the legislative authorities such amendments of the law as are necessary, amendments that will modify both positive and procedural laws.

116. In a related field, the Office is at present participating actively in the formulation of policies for children, work which will be of particular importance from the standpoint of the use of resources for social sector programmes such as those mentioned.

117. The Office for the Protection of Children and Minors at Social Risk. Human memory records with varying degrees of accuracy circumstances and events that have altered the history of humankind. This history makes but little reference, however, to the half of the population that consists of children and adolescents. We know nothing of the feelings, dreams, fears and hopes of this great mass of vulnerable and defenceless beings over the course of human history.

118. What we do know however is that the holy scriptures record such horrifying events as the ordering of the killing, for religious and political reasons, of all children under two years of age.

119. Infanticide was already practised in antiquity for the purpose of eliminating natural children.

120. Aggression of all kinds was used until well into the present century as a "method of instruction" for the teaching of children.

121. Sexual abuse practised by persons having responsibility for the protection and care of children is another injury that children have had to bear for many centuries and one that has not yet been eradicated. The best that has been achieved is that this can now be talked about and must no longer necessarily be suffered as something inevitable and shameful. Much remains to be done if children and adolescents are to be able fully to enjoy their rights.

122. Parents frequently see their children as adults in miniature with feelings and wills similar to their own. Many parents believe that their children are their property in the same way as their other possessions. For this reason children have to carry out their parents' will and, if they do not do so, may be punished. There is a belief that punishment is a part of upbringing and that the more severe it is the better will be the results obtained.

123. Physical and mental punishment has been used as a form of correction and teaching. Its consequences are very negative both for the child and for the relationship between a father or mother and their children. A child is the subject of rights, never an object of punishment. One of the rights of children

is to be corrected by their parents, teachers and other persons responsible for them in such a way that they learn from their errors and that the correction does not only leave feelings of pain, guilt or failure. What we are referring to here are the rights of children. We are referring to the effort made by humankind in this century to end the oblivion in which this population of vulnerable and defenceless people has been kept. The earlier Declaration of the Rights of the Child and the Convention on the Rights of the Child that has recently been approved and ratified by Costa Rica are now organizing the protection of children. The Convention commits States to ensuring respect for the rights of children in the areas of survival, development, protection and participation.

124. We are concerned, in Costa Rica, about the living conditions of children and adolescents. Poverty is effecting families and accelerating the processes of family deterioration whose greatest impact is on the most vulnerable group: the children.

125. One third of the families in the metropolitan area do not have enough to meet their basic needs and, of these, 23.4 per cent are in a critical state of poverty. Furthermore, 67 per cent of the homes of the poor have inadequate sanitation, while 36 per cent have inadequate accommodation and 33 per cent inadequate schooling.

126. Poverty, in addition to depriving families of sufficient food, accommodation and clothing to ensure that their children will be healthy and happy, is accompanied by the following factors that expose children to considerable social risk:

(a) Belonging to families with very limited possibilities of achieving adequate psycho-social and material conditions for the upbringing of children.

(b) Vulnerability to ill-treatment and abandonment.

(c) Early dropping-out from the educational system (no qualifications).

(d) Early entry into the labour market (mainly into the informal sector of the economy).

(e) A propensity to be picked up by the official social supervision agencies (mainly the police).

(f) A propensity to be placed in institutions.

(g) Diminished development of their physical, cognitive, affective and social potential.

127. Those considered to be at risk are children and adolescents who are ill-treated or abandoned, minors with disabilities and those belonging to ethnic minorities, children who are the victims of natural and ecological disasters, those who are in an irregular situation (offenders), those admitted to institutions and juveniles compelled to work.

128. The Office for the Protection of Children was established to ensure the implementation of the rights of children. It is a body to which children or their legal representative may have recourse in order to obtain advice, to request help or to complain about situations effecting their rights as children. The Office is an active agency, readily accessible to both children and adults. It may be contacted by telephone, in writing or by personal visit.

129. The Office is currently carrying out three programmes:

(a) Consultations, Complaints and Accusations Programme. In the consultations advice is given in situations connected with non-observance of the rights of children. In the case of complaints, the information is received and studied. A preliminary investigation is sometimes carried out. The Office has access to administrative and judicial records and where necessary it calls on the public body concerned to ensure observance of the child's rights, which in some cases may entail the imposition of a penalty on the official responsible. Furthermore, the Office may proceed, on its own initiative or on application by a party concerned, to submit to the Office of the Public Procurator a formal application in order that the latter may undertake the necessary investigation if the case involves harm caused to a child that constitutes a punishable criminal offence.

(b) Programme to Promote and to Provide Instruction and Information Concerning the Rights of the Child. This Programme addresses both adults and children but focuses particularly on the training of educators, health officials, the police, etc., as well as community organizations, with the aim of securing the establishment within communities of machinery for the protection of minors. The Programme, which is preventive in character, seeks to promote respect for the rights of children at all levels and recognizes the need for a change in upbringing standards that will require eradication of aggression and non-respect for the dignity of children.

(c) Programme for the Reform and Modernization of Legislation Concerning Minors. This Programme involves study of the present juridical framework with a view to the eventual submission of amending bills to the Legislative Assembly.

130. In the Office for the Protection of Children we believe in children. We are interested in knowing what they think, and how they live, what are their daily lives, what are their fears and what causes them to suffer. We want the more general rights to be translated into self-respect and love for others, the right to believe in a new and better world and the right to happiness and the communication of happiness to children, the right not to suffer aggression or to live at close quarters with it, the right to culture and knowledge of ones' own history, the right to make mistakes and, learning from errors, to progress resolutely without guilt and without fear, the right to express ones' feelings and opinions freely, the right to disagree with the opinions of others and yet

to continue to feel respected, and finally the right to be heard, to engage in dialogue and to obtain answers. In other words, the right to grow up and develop while enjoying respect and dignity.

131. The programmes currently being carried out by the Office for the Protection of Children are the following:

(a) A continuing programme of services to children and/or their representative or other parties concerned, in which the Office may be consulted, deals with complaints and lodges formal accusations.

132. (b) A Publicity, Information and Education Programme involving essentially preventive work that consists in spreading knowledge of children's rights among children themselves, their parents or guardians, teachers and the community, including governmental and non-governmental organizations.

133. All these help to support the work we are doing through talks given in communities and educational establishments. In so far as we are able, we also make use of the press, radio and television.

134. (c) A Programme of Legislative Reform in the Area of Human Rights, which will enable us very shortly to have our first data bank exclusively for this purpose. The planning and design of the data bank system have already been completed. We are now concluding the phase of typing in the legislation and have begun to study it. All this work is directed towards the modernization of our legislation on the rights of the child, which will include the development of a code of procedure for those cases where minors are parties to judicial proceedings.

135. In addition to the legislative efforts Costa Rica is making in order to fulfil its obligations in the area of protection of children, it is necessary to mention also the work being done by the Office of the President of the Republic and above all by the First Lady, Mrs. Gloria Bejarano de Calderón, in setting up the "Community Homes" that provide comprehensive care for children under the age of six years. These, functioning as family micro-units, constitute a very valuable alternative means of fulfilling the obligation of caring for and helping minors laid down in article 130 of the Family Code. They also make it possible for the mother to perform work for remuneration so that she can, without neglecting her child, obtain the means of providing for him.

136. We are currently carrying out a programme known as the "Open line for Children". The Office believes in children and listens to the them. We believe this is an effective, simple method, entirely free from bureaucracy, that gives immediacy to the Office's efforts to defend the rights of children.

137. Costa Rica has an excellent telephone service that extends even to the most remote localities. We therefore thought that children should have access to the Office by this means and a simple telephone call is now all that is required to set in operation the machinery provided by the Office for carrying

out its obligations in favour of children. In addition, it is very important for us to listen to the opinions of children and adolescents.

138. We believe that by this means we are not only placing the services of the Office within the reach of children, wherever in the country they may be, but we are also permitting the exercise of the right to freedom of expression that is recognized in article 13 of the Convention on the Rights of the Child.

139. The Office devotes special attention to the family and to the community, which are the two entities with the main responsibility for action to protect children and their rights. They are among the principle targets of the action being taken by means of publicity, education, consultations, etc.

140. We believe that without the active and effective participation of the family and of the community in finding solutions to the problems of children there is little that the governmental and non-governmental agencies can do, even though the latter must be deemed to have the support of community groups interested in the protection of children. It must be borne in mind that in the matter of duty towards children it is the community as a whole that has a responsibility, and not merely isolated groups, and that the family, as an integral part of the community and as the principle natural unit and foundation of society, as recognized in article 51 of the Constitution, is a particularly important instrument for the protection of children. For these reasons we consider the policy of community participation to be of vital importance in the efforts to provide protection for children and this is why we encourage people at the community level to join the Committees for the Defence of the Rights of the Child. One of the purposes of these Committees is to develop in the community an awareness of its own problems in this area and a realization that, by identifying and using their own resources and through the technical guidance they can give to governmental and non-governmental organizations, the needs of children can be met in a coordinated manner.

141. The importance of the Convention on the Rights of the Child. The Office for the Protection of Children - referred to as "minors" in Costa Rica's legislation - has always enjoyed a special status that is reflected in special legal provisions and special programmes. Nevertheless, Costa Rican children, like those of other nations, are not unaffected by acts of aggression that are committed against them and that take place either within a broken family or in one where there is abuse of family rights and obligations, or that are due to other causes including the following: a type of upbringing that is not suitable for the child, or insufficient preparation for or instruction in family management and inadequacy of or deficiencies in the government agencies responsible for implementation of programmes for children. Finally, all these factors are aggravated by the birth of children to parents who, because of their youth, civil status or social or economic situation, are unprepared for the demands of motherhood and fatherhood. This is made even worse by the influence of drug addiction and financial problems that are due to the inflation that has developed throughout the world in recent years and is also affecting Costa Rica.

142. It is for the foregoing reasons and because of the desire in Costa Rica to ensure the best possible protection for children that, when we learned of the existence of the draft Convention on the Rights of the Child, a national committee comprising specialists in various fields was immediately set up to study the draft Convention. This task, in which the Deputy Minister of

Justice and Pardons, Ms. Mónica Nágel Berger, took part, took several months of dedicated effort that resulted in the submission of a report which formed the basis of the Government decision to attend the session of the General Assembly of the United Nations at which the Convention on the Rights of the Child was adopted. The Director of Costa Rica's Office for the Protection of Children was a member of the delegation attending this session. Costa Rica, in addition to becoming a signatory of the Convention was also one of the first to approve and ratify it, thus duly incorporating it in our system of law with supra-legal status. Our juridical and administrative authorities now take the Convention into consideration in resolving matters in which childrens' problems are involved.

143. We have achieved a genuine system of justice for minors because we have had to adapt our system of law, as far as minors are concerned, to the latter's present day character and status. This has led the Office for the Protection of Children to envisage a complete overhaul of our legislation for children and the first steps in this project are already being taken with the setting up of the data bank mentioned earlier.

144. The Office for the Protection of Children, as a government agency, is financed from the central budget of the State, with funds being allocated by the Ministry of Justice and Pardons of which it forms a subordinate body. This situation seriously limits the funds available to the Office, because of the limited size of the Ministry's budget and the very large cost of carrying out the Ministry's other tasks. Consequently, the assistance furnished to us by UNICEF through its Office in Costa Rica and the great cooperation shown by Ms. Athenia Montejo, the UNICEF Representative, have been of particular value for the continuation and implementation of the above-mentioned programmes. Many initiatives have not yet been fully realized, however, owing to lack of resources and of funds, in particular.

145. WORKSHOPS - Report on implementation of the Convention on the Rights of the Child. As a result of the obligations which the Government of Costa Rica assumed with the adoption, signature and ratification of the Convention on the Rights of the Child, the Office for the Protection of Children, set up by Executive Decree No. 17733-J in 1987, has been strengthened by the passing of Act No. 7142 of March 1990 which provided the Office with a legal basis.

146. This Act gives the Office greater authority and places it at the same level as the various administrative and judicial authorities concerned with matters relating to children and with which it has to deal whenever the interests of children are involved, in accordance with article 1 of the Convention.

147. This Act also made possible a further strengthening of the Office as an authority taken into account by public and private agencies having to deal with minors, both in recognizing its participation, requests and opinions, and as a remedy available whenever guidance or action is required in order to resolve situations that may prevent achievement of the Office's purposes.

148. The work of the Office at the administrative, judicial and police levels, as well as at the community and family levels and in immediate relations with

children, has encouraged the conception of the child as a subject of the rights referred to in the Convention.

149. During the period since the drafting of the Convention the Office has devoted its main educational effort through the public media to informing the Costa Rican community concerning the rights of children.

150. Twelve workshops to promote the rights of children have been held at the community level and at the level of agencies working with children.

151. Training has been given to some 600 officials responsible for the management and supervision of academic work in the area of primary and secondary education.

152. Fifty talks and lectures on the subject of the rights established in the Convention have been given, to professionals in the areas of medicine, the social services, trade organizations, local communities, etc.

153. The Rural Guard in 4 communities has received training in the rights enunciated in the Convention.

154. The Office has participated in 50 television programmes that have dealt with the central topic of the rights of children referred to in the Convention.

155. A total of 6,480 cases have been dealt with through consultations, complaints and charges relating to the rights of children and 506 files have been established in relation to specially difficult situations.

156. Together with other State agencies, a permanent programme of instruction in the rights of children has been established for the police authorities. The major results of this programme have been: an occupational profile for police authority activities relating to the treatment of minors has been prepared and a National Training Programme on the Rights of the Child has been held for 60 police authorities of the Ministry of Public Security and the Ministry of the Interior and the Police.

157. Continuous efforts are being made to inform children and adolescents of their rights and to develop their thoughts on this subject. The achievements of these workshops and other activities have benefited the normal activities of the Office and furnished guidance for its efforts.

158. The following promotional and educational material concerning the rights of the child has been prepared, published and distributed:

- 5,000 copies of the publication "Defendamos los Derechos de los Niños y las Niñas";

- 1,000 copies of the story "Defendamos la Vida de Luisito y Anamaría";

- Audiovisual material (slide programme) "Defendamos la Vida de Luisito y Anamaría";

- 3,000 calendars for 1990, 1991 and 1992;

- 3,000 copies of the handbook "Manual Básico de Autoridades";

- 3,000 educational charts;

- 3,000 triptychs concerning the work being done by the Office to protect the rights of children;

- 5,000 posters and 2,500 pamphlets to encourage protection of the rights of children in Limón.

159. A community programme entitled "Limón extends a hand to children" is being implemented with the object of promoting the rights recognized in the Convention through training of teachers and cooperation with other bodies involved in caring for children and ensuring effective protection for them in the province. A pilot project being carried out in the Limoncito school involves the training of all the school's teachers as protectors of the rights of children, the training of parents in methods of child upbringing based on the rights of children, the organization of children's workshops on childrens' rights and the inclusion of local organizations in efforts to protect the rights of children.

160. Action is also being taken to bring Costa Rica's ordinary law into harmony with the content of the Convention, which takes precedence over it. The year 1991 saw the launching of a database project designed to centralize all the juridical rules relating to minors that are in force and to which reference is made in our system of positive law. The compilation has already been completed and the final phase of typing for entry in the database is now taking place. A special "Thesaurus" Programme has been developed for the four main components of the Convention: survival, development, protection and participation.

161. Analysis of the juridical compendium has begun with a view to the preparation of the new Minor's Code that will ensure consistency of the ordinary laws of Costa Rica with the content of the Convention. The aim is to cover all the legislation, both positive and procedural.

162. Difficulties. Children and adolescents need to have a real possibility of defending their rights. This was the idea underlying the establishment of the Office for the Protection of Children, in the light of the thinking that led to the creation of the "Ombudsman" in the Netherlands and the "Defender of the Rights of the People" in Spain. The most serious violations of the rights of children and of adolescents occur within the State itself and the responsibility lies directly with the various agencies of the State, in the way they perform

their obligations towards minors. The State institutions lose their raison d'être if they do not take action and provide support and guidance to young people in the exercise of their rights, sometimes paying greater attention to laws and regulations, administrative procedures and the subjective feelings of adults.

163. For the execution of its programmes the Office for the Protection of Children relies largely on the support of UNICEF, as it has no State budgetary provision for the conduct of its activities. This reduces the possibilities of expansion of the Office's programmes just when they have begun to earn the respect and recognition of public opinion and among those with whom it is mainly concerned: the children. It is they who inform the Office daily of different types of violation of their rights and it is as a result of this that tragic decisions by adolescents in crisis have been avoided and child victims of violence have received care while the welfare agencies are being contacted.

164. If the work of defending the human rights of children is to be developed, as is provided in the Convention, it will be essential to have sufficient personnel for administrative and technical work, the necessary facilities and equipment and a budget for obtaining the inputs necessary for the Office's activities.

165. The Convention, being the most important legal instrument available to children and adolescents, forms the very basis of all the activities undertaken by the Office. It provides the rules that are applied and quoted in almost all that we undertake. In implementation of the Convention we are devoting our efforts to encouraging reforms in the upbringing of children, in the type of attention devoted to minors and in minors' conception of themselves and of their environment during their early years, through exercise of their rights, efforts by the community to ensure respect for these rights and forms of community organization that contribute to the protection of children.

166. Domestic jurisprudence relating to the international covenants on human rights. In Costa Rica the protection of human rights by the courts functions in a number of special ways, the primary role being played, however, by the Constitutional Tribunal of the Supreme Court of Justice. This does not mean, however, that protection is not guaranteed by the ordinary courts. The Constitutional Tribunal is governed by the Constitutional Jurisdiction Act, article 1 of which provides the best introduction to this topic.

167. "The purpose of the present Act is to regulate constitutional jurisdiction. It is designed to guarantee the supremacy of constitutional rules and principles, as well as international and community law in force in the Republic, their uniform interpretation and application and the rights and freedoms recognized in the Constitution and in international human rights instruments in force in Costa Rica".

168. The Act states that the Constitutional Court has the function of "guaranteeing, by means of the remedies of habeas corpus and amparo, the rights and freedoms established by the Constitution and the human rights recognized by international law in force in Costa Rica" (article 2). Amparo safeguards all the fundamental rights, except those protected by habeas corpus, with a very broad regime of active and passive legitimation in the light of comparative law.

The requirements for making application for this remedy are minimal and it is worth noting that "no application for reconsideration nor for any other administrative remedy shall be required in order to make application for the remedy of amparo" (article 31). The effectiveness of the remedy is in no small measure due to the fact that application for it suspends execution of the decision complained of or of the legislative provisions that are questioned by the applicant (article 41).

169. As far as acts whose legality may be challenged are concerned, there are fortunately no provisions that limit jurisdiction in respect of so-called political decisions or that tend to restrict applications for remedy on grounds of higher interests of the administration. Some idea of the scope of the protection which the citizen enjoys in challenging laws or regulations through the remedy of amparo is obtained in cases where they are challenged in conjunction with their implementing regulations or in the case of rules having automatic effect (articles 30 and 48).

170. Habeas corpus constitutes a means of safeguarding freedom and physical integrity, freedom to stay in, leave or enter the national territory and to oppose unlawful restriction of the right to travel from one place to another within the Republic. The passive legitimation is even broader in scope than in the case of amparo, since habeas corpus applies in respect of acts or omissions "by an authority of any kind, including a judicial authority" (article 15).

171. A significant example may be given of how the constitutional jurisdiction on freedom has gradually transformed the Costa Rican legal system and the human rights instruments have become both a commonly used tool of lawyers and an everyday fact of public life. We quote below certain passages of the judgement given at 5 p.m. on 13 March 1990 by the Constitutional Tribunal as they serve to show how international human rights law has become a living part of Costa Rican internal law:

172. Application for habeas corpus was made in respect of a number of persons detained under a criminal court order and sentenced to imprisonment for six months for the offence of obstruction of services. The persons concerned applied for the remedy of habeas corpus, claiming that up to that time there had been no possibility of appeal against the judgement because of criminal procedure action of a legislative nature, which was in flagrant violation of article 8.2 (h) of the American Convention on Human Rights. This provides as follows:

173. "Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings every person is entitled, with full equality, to the following guarantees:

(a, b, c, d, e, f, g).

(h) The right to appeal the judgement to a higher court".

174. Notwithstanding the fact that the Code of Criminal Procedure specifies that application for judicial review may be made only where the sentence is one

of imprisonment for two years or more, the Constitutional Tribunal allowed the application for review, ordered the immediate release of the persons concerned until such time as definitive judgement had been rendered in the case, after they had been allowed an opportunity to apply for review. The grounds given for this decision were the following:

175. I. While laws which conflict with an international treaty could be the subject of action to challenge their constitutionality, "nevertheless, where the provisions of the treaty were inherently executory and executable, without any requirement for other rules of internal law providing for their execution, the conflicting provisions should be considered simply as repealed, precisely because of the paramount nature of the treaty. Thus, ... the conflict between the law and the treaty ... must be resolved, in the first place and in so far as possible, by automatic repeal of the former inasmuch as it conflicts with the latter, even though this may also be achieved by the law being declared unconstitutional".

176. II. "... The Tribunal finds that the rule invoked, article 8.2 (h) of the American Convention on Human Rights ... is perfectly clear and unambiguous in recognizing the fundamental right of every human being charged with a criminal offence to have his conviction and sentence reviewed by a higher tribunal".

177. Judgements such as that just referred to are reflected in the general provisions of the Constitutional Jurisdiction Act:

178. "The jurisprudence and precedents of the constitutional jurisdiction are binding erga omnes, except in respect of itself" (article 13).

179. A great amount of work of equal importance has been done by the Constitutional Tribunal in such areas as the principle of equality, the right to due process, the right to privacy, the right to life - in fact, virtually the whole range of fundamental rights in the western democratic tradition, as enunciated and clarified by international conventions and international laws. In illustration it may suffice to point out that limitation of the right of a person accused of a criminal offence to apply for judicial review of his conviction and sentence, established in article 474, paragraphs 1 and 2, of the Code of Criminal Procedure, has been annulled and held invalid, not by recourse to application for amparo, but as a result of a challenging of their constitutionality. It was held that the remedy of application for review satisfies the requirements of the American Convention on Human Rights, provided it is not interpreted with formalistic rigour (Constitutional Tribunal, judgement given at 4.30 p.m. on 26 June 1990). It is pointed out that pursuant to the American Convention on Human Rights the limitations imposed on applications for review through the above-mentioned remedy of habeas corpus were repealed by virtue of the paramount nature of international treaties and the unqualified nature of the fundamental right to appeal against criminal convictions or sentences. The Tribunal held that there was nothing to prevent the unconstitutionality of the rules (held to be repealed) being declared in a finding of unconstitutionality.

180. Report by the Office of the Attorney-General of the Republic:

RIGHT OF APPEAL: article 3 of the Constitutional Jurisdiction Act (No. 7135 of 11 October 1989) provides that: "The Constitution shall be deemed to have been violated when there is conflict between the text of the rule or decision questioned, its effects, or its interpretation or application by the public authorities, and the rules and principles of the Constitution". Pursuant to this paragraph, the constitutional principles form part of the perimeter of legitimacy for determining whether a rule or a decision is lawful or unlawful.

181. (a) The constitutional second hearing principle. The second hearing principle may be deduced from a reading of articles 39, 41 and 42 of the Constitution. Article 39 establishes the principle of legality in criminal law. Article 41 guarantees for everyone the right under law to obtain compensation for injury or damage to his person, property or moral interests and to receive prompt, effective and unrestricted justice in strict conformity with the law. Article 42 prohibits a single judge from issuing a final judgement in a case in several different instances. It provides that no one may be tried more than once for the same punishable act and it prohibits the reopening of criminal proceedings that have been concluded and decisions pronounced with force of res judicata, except where application for review may be made. Thus, on the basis of articles 39, 41 and 42 of the Constitution, the right to a second hearing is recognized by means of a constitutional principle.

182. (b) The Law of Criminal Procedure: The Code of Criminal Procedure (Act No. 5377 of 19 October 1973, in force since 1 July 1975) provides, in article 474, as follows:

"The accused may appeal against: (1) A sentence by a court to two or more years' imprisonment, a fine equivalent to 180 days' imprisonment, three years' disbarment from the exercise of his profession; payment of damages in an amount of more than 5,000 colones or preventive detention for two years or more. (2) A sentence by a criminal judge to a term of imprisonment of over six months, a fine equivalent to 180 days' imprisonment, one years' disbarment from the exercise of his profession; payment of damages in an amount of more than 2,500 colones or preventive detention for two or more years; (...)." Under the provisions quoted, the accused does not always have a right of appeal against his conviction, which implies a violation of the right to a second hearing.

183. In the light of this situation, the Executive submitted a draft revision of article 474 of the Code of Criminal Procedure and proposed the establishment of a higher criminal court of cassation (Gaceta No. 175 of 11 September 1987). This reform has been considered and approved by the Court in plenary sessions held on 25 and 28 May and 11 June 1987 (articles XL, VI and III respectively).

184. The Executive later submitted once again to the Legislative Assembly (at an extended special session) a bill to amend article 474 (among others) of the Code of Criminal Procedure and again proposed the establishment of the higher criminal court of cassation.

185. This bill providing for amendment of the article and the establishment of the higher criminal court of cassation is currently included as item 61 in the "Order of Business" (first reading) for ordinary sitting No. 37 (8 July 1992).

186. The obstacle to appeal constituted by article 474, paragraphs (1) and (2), was removed by the Constitutional Tribunal by its judgement No. 282-90 of 5 p.m. on 13 March 1990, pronounced in connection with an application for habeas corpus:

"No. 282-90. CONSTITUTIONAL TRIBUNAL OF THE SUPREME COURT OF JUSTICE, San José, at 5 p.m. on 13 March 1990,

187. "Considering the application for habeas corpus made by Mr. José Rafael Cordero Croceri on behalf of Vicente Chavarría Alanías, Matilde Guido Hernández, Julio Dinarte García, Guillermo Dinarte García, Walter Ordóñez Sandino, Vidal García Medina, Flor Briceño González and Gilberth Billy Arguijo, against the Criminal Court of Puntarenas,

188. "I. The application was submitted on the ground that the applicants had been unlawfully deprived of their personal freedom because their right to appeal against the judgement to a higher court in the manner provided for in article 8.2, paragraph (h), of the American Convention on Human Rights had not been recognized. II. Ms. Patricia Solano Castro, Criminal Court Judge of Puntarenas, in reporting in accordance with the law, states that the Court of Puntarenas heard the case No. 562-89 against the persons named, involving the charge of obstruction of services. By its judgement of 4.30 p.m. on 26 January 1990, the Court sentenced each of the accused, except José Luis Herrera Centeno who was sentenced in absentia as he did not appear in court, to imprisonment for six months. Of the others, only Matilde Guido Hernández and Gilberth Billy Arguijo A. did not incur a penalty of imprisonment as both were granted the benefit of suspension of sentence for a period of three years. III. In the matter of terms and procedures the provisions of the law were observed. Judge Piza Escalante, Recorder.

189. "CONSIDERING, I. While article 73, paragraph (d), of the Constitutional Jurisdiction Act allows parties concerned to challenge the constitutionality of provisions of the law which conflict with those of an international treaty and therefore are in breach of the principle that the latter take precedence over the former under article 7 of the Constitution, nevertheless, if the provisions of the treaty are inherently executory and executable without any need for other implementing legislation in the internal law, the national laws which are in conflict with them must simply be considered as repealed precisely because of the hierarchical superiority of the treaty. Thus, on the basis of the amendment of articles 10, 48, 105 and 128 of the Constitution (Act No. 7128 of 18 August 1989, in force since 1 September) and having regard, above all, to the Constitutional Jurisdiction Act (No. 7135 of 11 October 1989, in force since its publication on 19 October), the conflict between the law and the treaty is resolved in the first place, and in so far as possible, by automatic repeal of the former as conflicting with the latter, although this may also be achieved by a finding that the law is unconstitutional. II. The issue is one of procedure and determination of what is appropriate. If the question

arises as a result of habeas corpus or amparo action the Tribunal may give its ruling and resolve the matter without the need to allow the appellant the possibility provided for in articles 28 and 48 of the Act of challenging the law on the ground that it is unconstitutional. However, the Tribunal can and must do this by the method of testing constitutionality whenever an action challenging the constitutionality of a law is before it or it has to consider judicial or legislative questions of constitutionality as provided for in the Act. III. With regard to the specific object of the present appeal, the Tribunal considers that the rule invoked, article 8.2, paragraph (h), of the American Convention on Human Rights (the Pact of San José, Costa Rica, approved by Act No. 4534 of 23 February 1970 and ratified on 8 April 1970) is perfectly clear and unambiguous inasmuch as it recognizes the fundamental human right of all human beings accused of the commission of a criminal offence to appeal to a higher court against the judgement (in the case of conviction). IV. This right is unqualified in that the Convention does not make it subject to internal legislative measures for its implementation nor any other suspensive or supplementary condition. Moreover it is also unqualified in relation to internal law if the latter provides for the institutional and procedural machinery (organs and procedures) necessary for the exercise of this right of appeal or, in other words, if the internal law does not lack the institutional and procedural means that are required for the exercise of the right. Where it lacks these, the appeal obviously cannot be made without them, in which case the international obligation of the State to respect and guarantee the right, under article 1.1 of the Convention, will lead to the establishment of these means in accordance with article 2. V. The Tribunal considers that the case before it is one where immediate application of the treaty is involved because Costa Rica possesses both the organ and the procedures necessary for appealing against judgements such as that challenged in the present instance, since article 474, paragraphs 1 and 2, of the Code of Criminal Procedure allow, in general, the accused to apply in cassation for review of the conviction and sentence, although confining this remedy to cases where the accused is sentenced to two or more years of imprisonment or another penalty in ordinary proceedings, or to more than six months of imprisonment or another penalty in appeal proceedings, thus denying the possibility of appeal against lesser sentences. Thus, for the requirement of the above-mentioned article 8.2 (h) of the American Convention to be met it is sufficient for there to be no limitations such as those referred to and for it to be understood that an accused person sentenced to any penalty by a judgement in criminal proceedings for the commission of an offence is allowed by law to make application for review of the conviction and sentence. VI. Since the detention order in respect of the persons on behalf of whom the appeal has been submitted is in force and since some of these persons have already been imprisoned in execution of the penalty imposed on them by the judgement without the judgement being constitutionally sound, inasmuch as their right to seek review has not been recognized, it is appropriate to declare applicable the grant of habeas corpus and to order their release until such time as the case has been settled by a final judgement, once the accused have been given full opportunity under law to apply for review of the judgement in respect of the modalities and requirements for appeal, except, in the present case, for obvious reasons, the provisions in the last part of article 471, paragraph (2), of the Code of Criminal Procedure. They may make such application for review as from the personal notification to them of the present judgement.

190. "THEREFORE: By virtue of article 8.2, paragraph (h), of the American Convention on Human Rights, the application for review is declared allowed and the immediate release of the applicants is hereby ordered until such time as final judgement has been given in the case, once they have been given the opportunity to make application for review, such opportunity to commence upon the personal notification to them of the issuing of the present judgement, without application, in the present case, of the provisions of the last part of article 471, paragraph 2, of the Code of Criminal Procedure. By virtue of articles 26 and 51 of the Constitutional Jurisdiction Act, the State is ordered to pay them damages for the prejudice caused to them as well as the costs of this action for review, such damages to be paid in execution of this judgement by the Administrative Proceedings Court. The foregoing shall be notified.

Alejandro Rodríguez V
PRESIDENT

Rodolfo E. Piza Escalante — Jorge Baudrit G.

Jorge E. Castro B. — Juan Luis Arias

Luis Fernando Solano C. — Luis Paulino Mora M.

Juan Carlos Castro Loría
Acting Secretary

191. "The foregoing judgement was notified at 10.50 a.m. on 10 May 1990, in San José, to Vicente Chavarría Alanías, Matilde Guido Hernández, Julio Dinarte García and others by official letters left with the receptionist of the Office for the Protection of Human Rights, who acknowledged receipt of them by signature."

192. In the light of this judgement, there is at present no obstacle to the exercise of the right of appeal in Costa Rican Criminal Procedure.

193. (c) American Convention on Human Rights or Pact of San José. This Convention was approved by Act No. 4534 of 23 February 1970 (published in Gaceta No. 62 of 14 March 1970) and entered into force on 18 July 1978. Article 8 of this Convention, entitled "Right to a Fair Trial", provides as follows:

194. "...(2) Every person accused of criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality to the following minimum guarantees:
...(h) The right to appeal the judgement to a higher court; ..."

195. In order to give effect to the constitutional and treaty provisions, the Government of the Republic has sought approval of the legislative amendments referred to in section (b) above. Furthermore, as explained, the

Constitutional Tribunal has removed the procedural obstacle to appeals in criminal cases.

196. The recognition of the second hearing principle that is proposed in the amending bill is of considerable scope. The bill provides as follows "Article 474: the accused may appeal against: (1) Any judgement convicting or sentencing the accused for an offence; (2) A judgement dismissing the case or an acquittal order imposing on him a protective measure of hospitalization for an indefinite period; (3) Judicial actions preventing extinction of the penalty; (4) Decisions which impose a security measure if execution of the penalty is considered to have been effective in rehabilitating the accused".

197. Judicial suspension of the exercise of political rights. Political freedom is the right conferred on citizens to participate in the activity of the State, either in a governing capacity or by appointing their representatives to govern them. Title VIII, Chapter I, of the Constitution regulates matters relating to "citizens". Articles 90 and 91 of the Constitution provide as follows: "Article 90. Citizenship is the set of political rights enjoyed and political duties assumed by Costa Rican nationals over the age of 18 years", "Article 91. Citizenship may be suspended only in the following cases: (1) By judicially pronounced deprivation of rights; (2) By a judgement imposing the penalty of suspension of the exercise of political rights". Under our constitutional system - pursuant to the provisions of the above-mentioned article 91 of the Constitution and those of article 121, paragraph 7, and article 140, paragraph 4, - neither the Legislative nor the Executive may suspend "political rights". Articles 121, paragraph 7, and 140, paragraph 4, of the Constitution provide as follows: "Article 121. In addition to the other powers conferred by this Constitution, the Legislative Assembly shall have the following exclusive powers: (...) (7) to suspend, by vote of not less than two thirds of its total membership, in case of clear public necessity, the personal rights and guarantees referred to in articles 22 (freedom of movement), 23 (residence), 24 (inviolability of private documents and communications), 26 (freedom of assembly), 28 (freedom of opinion), 29 (freedom of expression), 30 (freedom of information) and 37 (liberty of person) of this Constitution. This suspension may apply to all the rights and guarantees or to some of them only, for the entire territory of Costa Rica or for a part thereof, and for up to 30 days. During such suspension only the Executive Power may order the detention of persons in establishments not intended for common criminals or order their banishment to an inhabited locality. The Executive Power must also inform the Assembly at its next session of any measures taken to preserve public order or maintain the security of the State. In no case may individual rights or guarantees not referred to in this paragraph be suspended; (the words between brackets are not in the original text)". "Article 140. The President and the Minister of the Interior shall jointly have the following duties and powers: (...) (4) During recesses of the Legislative Assembly, to order suspension of the rights and guarantees referred to in article 121, paragraph 7, in the same cases and with the same limitations as are therein provided, and to inform the Assembly immediately thereof. A Decree suspending guarantees is, ipso facto, equivalent to the convening into session of the Assembly, which must meet within the following forty-eight hours. If the Assembly does not confirm the measure by a vote of two thirds of its total membership, the guarantees shall be considered restored. If, owing to the lack of a quorum, the Assembly is unable to meet, it shall meet the following day with any number of deputies present. In this case the order of the Executive Power requires a vote of not less than two thirds of those present for approval."

198. It will be seen from the content of the provisions quoted that the political powers of the State - the Legislative and the Executive - may suspend only the rights and guarantees specifically mentioned and may suspend them only in the manner provided in the Constitution. Article 121, paragraph (7), provides that: "In no case may individual rights and guarantees not referred to in this paragraph be suspended". Consequently, the "political rights" of Costa Ricans may not be suspended by the Legislative and Executive Powers.

199. Only the Judicial Power - a technical juridical organ and not a political one - may suspend political rights in specific and individual cases and by means of a sentence. In this connection, articles 57 and 58 of the Penal Code provide as follows: "Article 57: general disqualification for a period of from six months to two years has the following effects for the person convicted: (1) Loss of any public employment, office or commission exercised, including any elective office; (2) Disqualification from obtaining the above-mentioned public offices, employment or commissions; (3) Deprivation of active and passive political rights; (...)". "Article 58: Specific disqualification, whose duration shall be the same as that of general disqualification shall consist in deprivation or restriction of one or more of the rights and functions referred to in the preceding article".

200. The Constitutional Tribunal of the Supreme Court of Justice. Articles 10 and 48 of the Constitution were amended by Act No. 7128 of 18 August 1989 to provide for the establishment of and to confer powers on the Constitutional Tribunal. These articles provide as follows: "Article 10. A specialized division of the Supreme Court of Justice shall have the power to declare unconstitutional, by an absolute majority vote of its members, laws and regulations of all kinds and acts that are the subject of public law. Jurisdictional acts of the Judicial Power, declarations of election made by the Supreme Electoral Tribunal and other acts specified by law may not be so challenged. The Constitutional Tribunal shall also have the following responsibilities: (a) To settle conflicts of competence between the powers of the State, including the Supreme Electoral Tribunal and such other entities or organs as are specified by law; (b) To be informed of consultations on proposals for amendment of the Constitution, proposals for approval of international conventions and treaties and other draft legislation, as provided by law". "Article 48. Every person has the right to apply for the remedy of habeas corpus in order to safeguard his personal freedom and integrity and for the remedy of amparo in order to maintain or restore the enjoyment of the other rights established by this Constitution, as well as the fundamental rights enunciated in the international human rights instruments applicable in the Republic. Both of these remedies shall be within the competence of the Tribunal referred to in article 10".

201. The above-mentioned constitutional amendments were followed by the Constitutional Jurisdiction Act (No. 7135 of 11 October 1989). This special Act regulating constitutional procedure deals with the remedy of habeas corpus, the remedy of amparo, the right of correction or reply, actions to challenge constitutionality, legislative consultation concerning constitutionality, judicial consultation concerning constitutionality and constitutional conflicts.

202. (a) The Remedy of Habeas Corpus: Article 18 of the Constitutional Jurisdiction Act states that the remedy of habeas corpus may be sought by "any person", by petition, telegram or other written means of communication, without the need for authentification. When telegraphy is used no charge shall be made

for the use thereof". The scope of the protection afforded by this remedy is defined in article 15: "Habeas corpus operates to safeguard liberty and security of person against acts or omissions by an authority of any kind, including a judicial authority, against threats to personal liberty and any hampering of or restriction on personal liberty improperly caused by authorities, as well as against unlawful restriction of the right to travel from one place to another within the Republic or of the right to stay freely in, to leave or to enter its territory".

203. (b) The Remedy of Amparo. Article 33 of the Constitutional Jurisdiction Act states that anyone may apply for the remedy of amparo and article 29 defines the competence of the Constitutional Tribunal in this regard in the following terms: "The remedy of amparo guarantees the fundamental rights and freedoms referred to in this Act, with the exception of those that are protected by habeas corpus.

204. The remedy operates against any provision, decision or resolution and, in general, against any act, omission or mere physical action not based on an enforceable administrative order, by public servants or agencies, that has violated, violates or threatens to violate any of these rights.

205. Amparo operates not only against arbitrary orders, but also against acts or omissions based on laws or regulations that are erroneously interpreted or improperly applied".

206. For the first time in our system of law, the Constitutional Jurisdiction Act broadens the protection of amparo against subjects of private law. Article 57 states that: "The remedy of Amparo shall also be granted against actions or omissions of subjects of private law if the latter are acting or have to act in the exercise of public functions or authority or are, in law and in fact, in a position of power against which the ordinary jurisdictional remedies are clearly insufficient or too slow to safeguard the fundamental rights and freedoms referred to in article 2, paragraph (a) of the present Act. Any decision rejecting an application for the remedy shall indicate the appropriate procedure for protection of the right that has been violated. The judgement may not include any remedy of amparo against lawful conduct by private subjects".

207. (c) Right of Correction or Reply. Chapter III is entitled: "Right of Correction or Reply". This right is dealt with in articles 66 and 69. "Article 66. The remedy of amparo guarantees the right of correction or reply arising from article 29 of the Constitution and article 14 of the American Convention on Human Rights to any person affected by inaccurate or injurious information disseminated to his detriment by communication media directed to the public in general and, therefore, the right to provide correction or give an answer through the same communication media in the manner provided for in this Act.

208. The correction or reply shall in no case ensure exemption from other legal liabilities that may have been incurred".

209. Article 69. The right of correction or reply shall be exercised in accordance with the following rules or, failing them, with the other provisions of this title:

210. (a) The person concerned shall make the appropriate application, in writing, to the owner or director of the medium of communication within five days of the publication or dissemination which it is intended to correct or challenge. The request must be accompanied by the text of his correction or reply, drafted as concisely as possible and without reference to irrelevant matters.

211. (b) The correction or reply shall be reproduced or disseminated and given prominence similar to that of the publication or broadcast to which it relates, within the three following days in the case of daily publications or broadcasts, and, in other cases, in the first possible publication or broadcast after that date.

212. The communication medium may refuse to publish or broadcast comments, statements or opinions that exceed reasonable limits or have no direct relation with the publication or broadcast.

213. (c) Following a hearing given within 24 hours to the communication medium, the Constitutional Tribunal shall deal with the application for remedy, without further proceedings, within the following three days.

214. (d) If the application for remedy is declared granted, the judgement to this effect shall approve the text to be published or broadcast, shall order that it be given prominence equivalent to that provided for in paragraph (b) and shall specify the form and manner in which the text is to be issued.

215. Action of unconstitutionality. The object of the act of unconstitutionality is to secure the cancellation of improper rules, regulations or judicial acts, with the exception of treaties, whose non-application may be decided only by the Constitutional Tribunal. Article 73 of the Constitutional Jurisdiction Act provides as follows: "An action of unconstitutionality may be brought: (a) against laws and other general provisions, including those originating in acts by private individuals, which, by action or omission, violate any constitutional rule or principle; (b) against subjective acts of public authorities if, by act or omission, they violate any constitutional rule or principle, where they are not subject to the remedies of habeas corpus or amparo; (c) if the enactment of laws or the issuance of legislative decisions violates any substantive requirement or procedure provided for in the Constitution, by in the rules of procedure, administration and internal discipline of the Legislative Assembly; (ch) if an amendment to the Constitution is approved that violates constitutional rules of procedure; (d) if any law or general provision violates article 7, paragraph 1, of the Constitution by conflicting with a public treaty or international convention; (e) if, in the signing, approval or ratification of international conventions or treaties, or in the content or effects thereof, there is violation of a constitutional rule or principle or of the rules of procedure, administration and internal discipline of the Legislative Assembly. In these cases, the ruling on constitutionality shall be made only to ensure that they are interpreted and applied in a manner consistent with the Constitution or, if their conflict with

the latter cannot be resolved, it shall be ordered that they are for general purposes inapplicable and that they be repealed; (f) against inertia, of and omissions and abstentions by public authorities. Article 75 specifies who is entitled to bring an action of unconstitutionality, depending on whether a judicial case is pending or an administrative one: "For an action of unconstitutionality to be brought there must be a pending case for decision by the courts, including cases of habeas corpus or amparo, or proceedings to exhaust administrative remedies must be under way in which the unconstitutionality is invoked as a reasonable means of protecting the right or interest that is considered to have been prejudiced.

216. There shall be no requirement of a prior unsettled case if the nature of the matter at issue is not such that direct and personal prejudice is caused, or if the question is one of defence of diffuse interests or interests of the community as a whole.

217. This requirement shall also not apply in the case of the Comptroller General of the Republic, the Attorney-General, the Procurator-General of the Republic or the Public Defender.

218. In the cases referred to in the two preceding paragraphs, where the action is brought the procedures indicated in the following articles shall be followed, as appropriate".

219. Legislative request for opinion as to constitutionality. There are two types of legislative requests for an opinion on constitutionality, one preceptive and the other optional. The former is made by the Office of the President of the Assembly and the latter by a minimum of 10 deputies. Where such a request is made the Constitutional Tribunal makes an a priori verification of the constitutionality of the draft legislation concerned. The request for the opinion may be made by the Supreme Court of Justice, the Supreme Electoral Tribunal, the Attorney-General or the future Public Defender in the situations specified in the Constitutional Jurisdiction Act. In this connection article 96 states: "When an opinion on constitutionality is sought, the constitutional jurisdiction shall give its prior opinion regarding draft legislation in the following cases: (a) Preceptively in the case of draft amendments to the Constitution or to the present Act or proposals to approve international conventions or treaties, including reservations in respect thereof; (b) In the case of any other draft legislation; legislative approval of administrative acts or contracts or amendments to the rules of procedure, administration and internal discipline of the Legislative Assembly, where the opinion is requested by not less than 10 deputies; (c) In the case of requests by the Supreme Court of Justice, the Supreme Electoral Tribunal or the Office of the Attorney-General, where the opinion is sought concerning draft legislation or motions incorporated therein, in the handling, content or effects of which it is considered that the principles or rules relating to their respective constitutional competence have been improperly ignored, interpreted or applied; (ch) If the request is made by the Public Defender because he considers that the texts concerned violate fundamental rights or freedoms recognized by the Constitution or the international human rights instruments in force in the Republic".

220. Judicial request for opinion as to constitutionality. The judicial request, like the one referred to above, may be preceptive or optional. By giving its opinion on constitutionality in response to a judicial request, the Constitutional Tribunal exercises supervision over the rules or decisions that must be applied by the courts, or any acts, conducts or omissions on which it must rule. In this connection article 102 of the Constitutional Jurisdiction Act states: "Every court shall have the right to consult the Constitutional Tribunal whenever there are justified doubts as to the constitutionality of a rule or decision which it must apply, or of an act, conduct or omission it must rule upon in a case referred to it.

221. Furthermore, the opinion as to constitutionality must be given preceptively in cases of application for review, as referred to in article 42 of the Constitution, that are based on an alleged violation of the principles of due process or of the right to a hearing or the right to defence; however, this shall apply only for the purpose of enabling the Constitutional Tribunal to define the content, conditions and scope of such principles or rights, without qualifying or evaluating the circumstances of the specific case giving rise to the application for remedy".

222. Constitutional conflicts. The settlement of such conflicts is dealt with in articles 109, 110 and 112 of the Constitutional Jurisdiction Act in the following terms: "Article 109. It shall be the responsibility of the Constitutional Tribunal to settle the following: (a) Conflicts of competence or powers between the powers of the State, including the Supreme Electoral Tribunal, or between any of them and the Office of the Attorney-General; (b) Conflicts of constitutional competence or powers between any of the above-mentioned powers or organs and local bodies, municipalities and other public law entities, or conflicts between any of these. Article 110. The matter shall be referred to the Constitutional Tribunal by the senior authority of any of the organs or entities in conflict, who shall transmit to the Secretariat of the Tribunal a written statement including all the juridical grounds on which it is based.

223. The President of the Tribunal shall give a hearing to the senior authority of the other organ or entity within a period of 8 days, which may not be extended. Article 112: The following shall be amended: (a) Article 21, paragraph 2, of the Special Courts Jurisdiction Act, No. 5711 of 27 June 1975, as amended by article 6 of Act No. 6726 of 10 March 1982, to read thus: (a) "In extradition cases the relevant law shall apply", (b) Article 20, paragraph 2, of the Administrative Tribunals Regulation Act, No. 3667 of 20 March 1966, to read as follows: "2. The foregoing is applicable, also on constitutional grounds, to laws and other regulatory provisions and decisions of the public administration, for the purposes of any related action of unconstitutionality"; (c) Article 490 of the Code of Criminal Procedure, to which there shall be added a paragraph (6) reading as follows: "(6) If this has not been imposed by means of due process or possibility of defence"; (ch) Article 45 of the Act establishing the Costa Rican Social Security Fund, No. 17 of 22 October 1943, as amended, which shall read as follows: "Article 45. Failure by anyone to pay to the Fund the amount of the worker's contribution provided for in article 30 of the present Act shall constitute improper withholding and therefore give rise to the penalty established in article 216 of the Penal Code.

224. In the case of the impediment referred to in the last paragraph of article 223 of the Penal Code, the employer may offer sufficient security for the amount of the workers' contributions withheld.

225. A fine equivalent to from 30 to 180 days' imprisonment shall be imposed on an employer who fails to deduct the workers' contribution provided for in article 30 of the present Act. Where the employer is a juridical person, the obligation shall lie with its legal representative. The employer shall be summoned by the Head of the Collections and Payments Department of the Costa Rican Social Security Fund to deposit in favour of the Costa Rican Social Security Fund the amount of the contributions not withheld, within five days reckoned from the receipt of the communication.

226. If the payment has not been made within this period, the fact shall be reported to the Government Procurator's Office for appropriate action.

227. A penalty consisting of a fine equivalent to from 60 to 300 days' imprisonment shall be imposed on any employer who conducts manoeuvres, makes false declarations or commits any other acts or omissions tending to defraud the interests of the Costa Rican Social Security Fund in the matter of contributions".

228. Article 108 of the Penal Code. Article 108 of the Penal Code states: "An obligation to pay civil compensation shall also lie with those who make slanderous or libelous accusations or complaints. The State and individual accusers or complainants shall also be obliged to pay compensation if, as a result of judicial review of the facts of the case the accused is declared innocent and his acquittal is pronounced after he has served more than a year of preventive detention.

229. The judicial or administrative authorities, as the case may be, shall also be liable under civil law, without prejudice to any criminal proceedings, if, despite the objections of the accused, they extend the length of the prison sentence after the initial sentence has been served under the rules established for the execution of sentences".

230. This article has not been amended nor are there any plans for its amendment, as far as we are aware. It is pointed out that there has been no judgement in respect of any case based on the first paragraph of this article. With regard to the second paragraph of article 108 (improper extension of prison sentence by the judicial or administrative authorities), article 26 of the Constitutional Jurisdiction Act deals with the matter as follows: "A judgement allowing habeas corpus shall leave without effect the measures complained of in the application for remedy, it shall restore to the applicant the full enjoyment of his right or freedom that has been violated and shall produce the other effects of the judgement in the case concerned.

231. It shall also order the authority responsible to pay compensation for the damage and prejudice caused. This compensation shall be paid and effected through the administrative procedures for enforcement of judgements provided for in the legislation regulating the jurisdiction".

232. The Supreme Electoral Tribunal. In Costa Rica, as in some other countries, the senior electoral judges, known as Electoral Magistrates, are not appointed by decision of the parties, but by the Supreme Court of Justice, by a qualified majority vote. Articles 100 and 102 of the Constitution provide as follows:

233. "Article 100. The Supreme Electoral Tribunal shall normally be composed of three regular Magistrates and six alternates appointed by the Supreme Court of Justice by a vote of not less than two thirds of the total membership. They shall have the same qualifications and shall have the same responsibilities as the Magistrates forming the Supreme Court.

234. From one year before to six months after the holding of general elections to choose the President of the Republic and the Deputies to the Legislative Assembly, the Supreme Electoral Tribunal shall add to its membership two of its alternate magistrates, so as to form, within this period, a Tribunal of five members.

235. The Magistrates of the Supreme Electoral Tribunal shall have the same working conditions, in so far as they are applicable, and the same minimum working day as are provided for in the Judicial Power Organization Act for magistrates of the Cassation Division, and they shall receive the same remuneration as is established for the latter".

236. "Article 101. The magistrates of the Supreme Electoral Tribunal shall serve for a six-year term. A regular magistrate and two alternates shall be replaced every two years, but they may be re-elected.

237. The magistrates of the Supreme Electoral Tribunal shall enjoy the immunities and prerogatives that apply to members of the supreme powers".

238. Certain provisions in article 102 of the Constitution are worth noting as they are not common in electoral systems:

239. "Article 102. The functions of the Supreme Electoral Tribunal shall be:

(1) To convene general elections;

(2) To appoint the members of the Electoral Boards in accordance with the law;

(3) To interpret, on an exclusive basis and mandatorily, the provisions of the Constitution and the law relating to the subject of elections;

(4) To consider, on appeal, appealable decisions issued by the Civil Registry Office and the Electoral Boards;

(5) To investigate itself or through officials whom it appoints (delegados) and to give its judgement on any complaint by the parties concerning political partiality shown by civil servants in the exercise of their functions, or concerning political activities engaged in by officials for whom such activities are prohibited. A finding of culpability made by the Tribunal shall automatically give rise to the dismissal of the person found culpable, who shall be disbarred from holding public office for a period of not less than two years, without prejudice to any criminal liability he may incur. However, if the investigation that is conducted results in charges against the President of the Republic, ministers of the Government, diplomatic ministers, the Comptroller-General or Deputy Comptroller-General of the Republic, or magistrates of the Supreme Court of Justice, the Tribunal shall report to the Legislative Assembly the results of the investigation;

(6) To instruct the forces of law and order as to the measures to be taken to ensure that the electoral process takes place under conditions guaranteeing unrestricted freedom. If the calling up of military units is ordered, the Tribunal may also order measures to ensure that the electoral process is not hindered, so as to ensure that all citizens may freely cast their vote. The Tribunal shall carry out these measures itself or through officials whom it appoints;

(7) To carry out the final scrutiny of the votes cast in the election of the President and Vice-Presidents of the Republic, Deputies to the Legislative Assembly, members of Municipal Authorities and representatives in Constituent Assemblies;

(8) To declare the final result of elections for the Presidency and Vice-Presidencies of the Republic within 30 days following the date of the ballot and, within such period as may be determined by law, the result of the elections of the other officials referred to in the preceding paragraph;

(9) Such other functions as may be entrusted to it by the Constitution or the law".

240. Paragraph (3), in giving the Supreme Electoral Tribunal exclusive and mandatory power to interpret provisions of the Constitution and of the law relating to electoral matters, grants it powers usually held by Legislative Assemblies. Moreover, when we note that it can interpret the Constitution, in regard to electoral matters, ON AN EXCLUSIVE AND BINDING BASIS, we see that it is given extraordinary powers not to be found in other legislations. Nevertheless, it must be added that article 97 of the Constitution states, literally, the following:

"Article 97. For the consideration and approval of draft legislation relating to electoral matters, the Legislative Assembly shall consult the Supreme Electoral Tribunal. The votes of two thirds of the total membership shall be required for a decision to ignore the opinion of the Tribunal.

Within six months prior to and four months following the holding of a general election, the Legislative Assembly may, however, transform into law draft legislation concerning such matters in respect of which the Supreme Electoral Tribunal has expressed its disagreement".

241. As indicated earlier, there is thus clearly established a genuine constitutional protection of the organ responsible for the implementation of the electoral process. As can be seen, the Legislative Assembly cannot pass any law concerning electoral matters without first having consulted the Tribunal and the votes of two thirds of its members are required for any decision not to accept the Tribunal's opinion, but - and what follows is unusual - during the six months prior to and the four months following the holding of a general election, THE LEGISLATIVE ASSEMBLY MAY NOT TRANSFORM INTO LAW DRAFT LEGISLATION ON SUCH MATTERS IN RESPECT OF WHICH THE SUPREME ELECTORAL TRIBUNAL HAS EXPRESSED ITS DISAGREEMENT. It will be noted that the negative opinion of the Tribunal becomes a total veto and not even the total membership of the Assembly can deviate from the Tribunal's view.

242. In the reference in paragraphs (5) and (6) to officials appointed by the Tribunal, we see the development of an organization composed of Costa Rican citizens who, without having any interest in party struggles for political power, although they possess power through the support and strengthening of the democratic system enjoyed by our country, perform their function ad honorem. They become intermediaries of the forces of law and order who place themselves at the orders of the Tribunal and coordinate with the leadership of each party questions relating to the public meetings to be held by these political organizations, for the purpose of protecting those who are entitled nowadays to hold political meetings. They also coordinate with the traffic authorities on matters relating to the routing of and security to be provided for marches by the supporters of the political parties, etc. This Corps of Delegados of the Supreme Electoral Tribunal has performed admirably and is composed of some 600 persons almost all of whom are professional people, businessmen or industrialists recognized in Costa Rica for their integrity. The Electoral Tribunal of Panama recently decided, on the basis of the Costa Rican experience, to establish a similar organization and Tribunal delegados from Costa Rica have visited Panama to explain in detail the functioning of this organization.

243. Article 104 of the Constitution sets forth the other constitutional obligations imposed on the Tribunal, which form an important part of the Costa Rican electoral system. This article provides as follows:

"Article 104. There shall be a Civil Register Office which shall come under the exclusive responsibility of the Supreme Electoral Tribunal and whose functions shall be:

(1) To draw up the Central Civil Register and establish the electoral rolls;

(2) To deal with applications for acquisition of Costa Rican nationality, as well as cases of loss of nationality; to execute court judgements suspending citizenship and to deal with the procedures for recovery of citizenship. Decisions taken by the

Civil Register under the powers referred to in this paragraph may be appealed to the Supreme Electoral Tribunal;

(3) To issue identity cards;

(4) To perform such other functions as are provided for in the Constitution and the law".

5 November 1992